

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

**ROBERT LEE MORRIS v. HOWARD CARLTON, WARDEN
and the STATE OF TENNESSEE**

**Appeal from the Circuit Court for Johnson County
No. 4117 Lynn W. Brown, Judge**

**No. E2004-00378-CCA-R3-HC
June 9, 2004**

The petitioner, Robert Lee Morris, appeals the trial court's denial of his petition for writ of habeas corpus. The state has filed a motion requesting that this court affirm the trial court's denial of relief pursuant to Rule 20, Tenn. Ct. Crim. App. R. The petition presents no cognizable claim for habeas corpus relief. Accordingly, the state's motion is granted and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed
Pursuant to Rule 20, Tenn. Ct. Crim. App. R.**

JOSEPH M. TIPTON, J., delivered the opinion of the court, in which GARY R. WADE, P.J., and JAMES CURWOOD WITT, JR., J., joined.

Robert Lee Morris, Mountain City, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter; Thomas E. Williams, John H. Bledsoe, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On July 24, 1988, the petitioner was convicted by a Hamilton County jury of three counts of aggravated rape, two counts of aggravated sexual battery, two counts of assault with intent to commit sexual battery, and one count of assault and battery. On appeal, this court affirmed all of the defendant's convictions and sentences, except his convictions and sentences for the two counts of aggravated sexual battery which were reversed and remanded for a new trial. As a result, the petitioner was left to serve an effective sentence of forty years in prison. See State v. Morris, 788 S.W. 2d 820 (Tenn. Crim. App. 1990), app. denied (Tenn. 1990). The petitioner's first post-conviction relief petition raising claims of double jeopardy and ineffective assistance of counsel was denied on its merits. This court affirmed the trial court's judgment on appeal. See Robert Lee Morris v. State, No. 03C01-9409-CR-00343 (Tenn. Crim. App., Knoxville, July 5, 1995). The record reflects that a second post-conviction petition was dismissed in December 2002.

On January 10, 2003, the petitioner filed the instant petition for writ of habeas corpus in the Circuit Court for Johnson County. The petitioner claimed ineffective assistance of counsel, judicial abuse of discretion and that the prosecution knowingly used perjured testimony at his trial. The petitioner attached in support of his petition a September 2002 affidavit of one of his victims in which the victim stated that he gave false testimony at the petitioner's trial in exchange for payment and release from custody on an unrelated charge. The trial court denied relief, finding that the petition established neither a void conviction nor an expired sentence.

In this state, “[a]ny person imprisoned or restrained of his liberty, under any pretense whatsoever, except [those held under federal authority], may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment and restraint.” Church v. State, 987 S.W.2d 855, 857 (Tenn. Crim. App. 1998); Tenn. Code Ann. § 29-21-101. The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. Archer v. State, 851 S.W. 2d 157, 163 (Tenn. 1993) (citing State ex rel. Newsom v. Henderson, 221 Tenn. 24, 424 S.W.2d 186, 189 (1968)). Habeas corpus relief is available only when it appears on the face of the judgment or the record that the trial court was without jurisdiction to convict or sentence the defendant or that his sentence has expired. Archer, 51 S.W.2d at 164. The burden is on the petitioner to establish that the judgment is void or that the sentence has expired. State ex rel. Kuntz v. Bomar, 214 Tenn. 500, 504, 381 S.W.2d 290, 291-92 (1964).

The petitioner has not established that he is entitled to habeas corpus relief. He has alleged neither a facially invalid judgment nor an expired sentence. The petitioner's claims, if proven, would render the challenged judgment voidable rather than void. The "authorized avenue for attacking a voidable judgment is a petition for post-conviction relief." State v. McClintock, 732 S.W.2d 268, 272 (Tenn. 1987). In this case, however, the petitioner has previously exercised his right to seek post-conviction relief. See Tenn. Code Ann. § 40-30-202(c). This court concludes that the trial court properly denied the petition for writ of habeas corpus.

Accordingly, the state's motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Tenn. Ct. Crim. App. R.

JOSEPH M. TIPTON, JUDGE